

2013 Referendum Petition Log

REFERENDA INTENDED FOR THE MAY 21, 2013 SPECIAL ELECTION

- Deadline to submit signature sheets for this referendum- 5:00 p.m. October 12, 2012
 - Required signatures of active voters - 19,858
-

Measure 26-151

Prospective Petition Filed: 9/12/2012

Chief Petitioners (contact information):

Kimberly Kaminski

kim@safewateroregon.org

Frances Quaempts-Miller

<No email provided>

Malgosia Cegielski

<No email provided>

Petition Committee

Clean Water Portland Referendum Committee

State Committee ID# 16027 [Statement of Organization](#)

Title of Ordinance:

[Ordinance No. 185612](#)

Authorize and direct the Portland Water Bureau to flouridate the City of Portland's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Oregon Health Authority.

Status:

9/12/2012 - Portland City Council passes [Ordinance No. 185612](#).

9/12/2012 - Prospective referendum petition filed; Auditor approves signature and cover sheets for circulation.

9/13/2012 - Auditor's Office requested ballot title from City Attorney. Two copies of petition filing forwarded to City Attorney for ballot title preparation.

9/20/2012 - City Attorney delivers [ballot title](#) to Auditor. Ballot title challenge period: an elector may file a petition for review of this ballot title in the Multnomah County Circuit Court no later than 5:00 P.M. on Monday, October 1st, 2012.

10/02/2012 - [Ballot title challenge](#) filed in Multnomah County Circuit Court.

10/11/2012- Auditor's Office received referendum petition signature sheets; chief petitioners estimate to have collected 43,236 signatures. City Auditor's Office has 30 days to complete verification process and arrange for validation of signatures with Multnomah County.

11/07/12 - Auditor's Office received statistical sampling reports from the Multnomah County Elections Office. Petition is estimated to have 33,015 valid City of Portland registered voters and therefore qualifies for the ballot.

11/08/12 - Auditor's Office certified results. According to Portland City Code 2.04.100 A. Council may, within 30 days, or until December 8th, 2012, repeal an ordinance which is the subject of a referendum petition.

12/11/12 - Judge Immergut [issues](#) ruling on ballot title challenge

12/20/12 - Portland City Council passes [resolution](#) to place Referendum Petition PDX 02 on a special election ballot to be held May 21, 2013.

12/21/12 - [Notice of Measure Election](#) (updated) filed with Multnomah County Elections. PDX 02 Referendum certified to May 21, 2013 ballot and given measure number 26-151.

5/21/13 - Voters [reject](#) measure 26-151.

Related Documents:

[Letter to Chief Petitioners from Auditor's Office](#)

[Auditor's Office Certification for Council Action](#)

[Sampling Results](#)

[Calculation Sheet](#)

[Resolution passed by City Council authorizing Special Election](#)

Notice of City Measure Election

SEL 802

rev 1/12: ORS 250.035, 250.041,
250.275, 250.285, 254.095, 254.465

City and Notice Information

Notice is hereby given on March 26, 2013, that a measure election will be held in

City of Portland

Oregon on May 21, 2013.

Name of City or Cities

Date of Election

The following shall be the ballot title of the measure to be submitted to the city's voters:

Caption 10 words

See attached

Question 20 words

See attached

Summary 175 words

See attached

The following authorized city official hereby certifies the above ballot title is true and complete, which includes publication of notice and the completion of the ballot title challenge process.


Signature of Authorized City Official not required to be notarized

3/26/13
Date Signed mm/dd/yy

Deborah Scroggin
Printed Name of Authorized City Official

Elections Officer
Title

CAPTION: Fluoridation of Portland drinking water supply

QUESTION: Shall Portland fluoridate its drinking water supply?

SUMMARY:

Portland supplies drinking water to city residents and businesses and to several other municipalities and water districts outside Portland. Portland currently does not add fluoride to its drinking water supply.

This measure requires Portland to fluoridate Portland's drinking water supply. The measure requires fluoridation at the levels recommended by the Centers for Disease Control and Prevention or the Oregon Health Authority intended to reduce tooth decay and promote oral health. The measure is a referral of an Ordinance adopted by the Council. Although the Ordinance requires fluoridation of Portland's drinking water supply by March 1, 2014, the actual date of implementation of fluoridation will depend on the effective date of this measure. The fluoride must meet standards of the American Water Works Association. The measure requires record-keeping related to quantities of water treated and the type and amounts of fluoride used. The measure also requires the City to conduct tests for fluoride in treated and untreated water in accordance with state and federal recommendations.

The measure funds fluoridation through water user fees.

RESOLUTION No. 36993

Set referendum on fluoridation of Portland drinking water supply for Special Election on May 21, 2013 (Resolution)

WHEREAS, on September 12, 2012, the Council adopted Ordinance No. 185612 authorizing and directing the Portland Water Bureau to add fluoride to the City of Portland's public water supply; and

WHEREAS, on October 11, 2012, the City Auditor received petition signature sheets for a referendum petition ID PDX 2, filed on September 12, 2012, regarding Ordinance No. 185612; and

WHEREAS, on November 8, 2012, elections officials determined that signature gatherers had submitted sufficient valid signatures to refer Ordinance No. 185612 to the voters of the City of Portland; and

WHEREAS, the Multnomah County Circuit Court has approved a ballot title for Referendum Petition ID PDX 2 in the case of Kaminski v. Van Dyke, Multnomah Circuit Court Case No. 12-10-12349; and

WHEREAS, there is a Special Election scheduled for Multnomah County for May 21, 2013; and

WHEREAS, the Council has separately referred a local option levy renewal measure to the Portland voters for the May, 2013 special election by Resolution No. 36979; and

WHEREAS, under Oregon law, the operation of Ordinance No. 185612 is suspended until the voters of the City of Portland have the opportunity to vote approval or rejection; and

WHEREAS, the public interest in the prompt resolution of the question outweighs the costs that would be associated with setting Referendum Petition ID PDX 2 for a special election;

NOW, THEREFORE, BE IT RESOLVED, that referendum petition ID PDX 2 is submitted to the legal voters of the City of Portland, Oregon, for their adoption or rejection at the special election in the City of Portland, Multnomah County, Clackamas County and Washington County to be held on May 21, 2013; and

36993

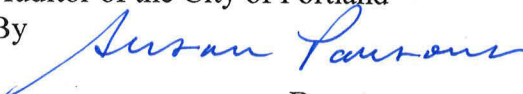
BE IT FURTHER RESOLVED, that the City Auditor is directed to forward to the County Elections Office all material necessary to place for Referendum Petition ID PDX 2 on the May 21, 2013 election ballot; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is hereby authorized to incur expenses necessary and incident to the conduct of such special election or elections.

Adopted by the Council: DEC 20 2012
Commissioner Leonard
Prepared by: Stu Oishi/Ben Walters
Date Prepared: 12/12/12

LaVonne Griffin-Valade
Auditor of the City of Portland

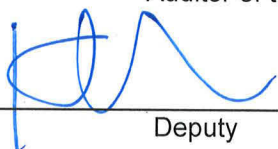
By



Deputy

Agenda No.
RESOLUTION NO. 36993
Title

Set referendum on fluoridation of Portland drinking water supply for Special Election on May 21, 2013
(Resolution)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Commissioner Randy Leonard</p> <p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration – Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish <i>Randy Leonard / Stuart Oishi</i></p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p style="text-align: center;">BUREAU APPROVAL</p> <p>Prepared by: Stuart Oishi and Ben Walters Date Prepared: 12/12/12</p> <p>Financial Impact Statement & Public Involvement Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date Thursday, December 20, 2012</p> <p>City Attorney Approval <i>Benjamin Walters</i></p>	<p>CLERK USE: DATE FILED <u>DEC 14 2012</u></p> <p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By:  _____ Deputy</p> <p>ACTION TAKEN:</p>
---	---

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/> Start time: <u>2:00 PM</u></p> <p>Total amount of time needed: 2 hours (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	✓
2. Fish	2. Fish	✓
3. Saltzman	3. Saltzman	_____
4. Leonard	4. Leonard	✓
Adams	Adams	✓

RESOLUTION No. 36993

Set referendum on fluoridation of Portland drinking water supply for Special Election on May 21, 2013 (Resolution)

WHEREAS, on September 12, 2012, the Council adopted Ordinance No. 185612 authorizing and directing the Portland Water Bureau to add fluoride to the City of Portland's public water supply; and

WHEREAS, on October 11, 2012, the City Auditor received petition signature sheets for a referendum petition ID PDX 2, filed on September 12, 2012, regarding Ordinance No. 185612; and

WHEREAS, on November 8, 2012, elections officials determined that signature gatherers had submitted sufficient valid signatures to refer Ordinance No. 185612 to the voters of the City of Portland; and

WHEREAS, the Multnomah County Circuit Court has approved a ballot title for Referendum Petition ID PDX 2 in the case of Kaminski v. Van Dyke, Multnomah Circuit Court Case No. 12-10-12349; and

WHEREAS, there is a Special Election scheduled for Multnomah County for May 21, 2013; and

WHEREAS, the Council has separately referred a local option levy renewal measure to the Portland voters for the May, 2013 special election by Resolution No. 36979; and

WHEREAS, under Oregon law, the operation of Ordinance No. 185612 is suspended until the voters of the City of Portland have the opportunity to vote approval or rejection; and

WHEREAS, the public interest in the prompt resolution of the question outweighs the costs that would be associated with setting Referendum Petition ID PDX 2 for a special election;

NOW, THEREFORE, BE IT RESOLVED, that referendum petition ID PDX 2 is submitted to the legal voters of the City of Portland, Oregon, for their adoption or rejection at the special election in the City of Portland, Multnomah County, Clackamas County and Washington County to be held on May 21, 2013; and

36993

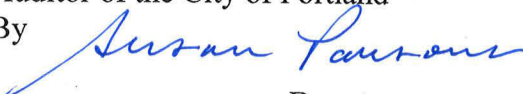
BE IT FURTHER RESOLVED, that the City Auditor is directed to forward to the County Elections Office all material necessary to place for Referendum Petition ID PDX 2 on the May 21, 2013 election ballot; and

BE IT FURTHER RESOLVED, that the Auditor of the City of Portland is hereby authorized to incur expenses necessary and incident to the conduct of such special election or elections.

Adopted by the Council: DEC 20 2012
Commissioner Leonard
Prepared by: Stu Oishi/Ben Walters
Date Prepared: 12/12/12

LaVonne Griffin-Valade
Auditor of the City of Portland

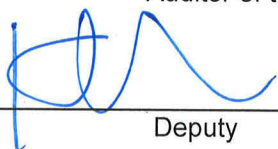
By



Deputy

Agenda No.
RESOLUTION NO. 36993
Title

Set referendum on fluoridation of Portland drinking water supply for Special Election on May 21, 2013
(Resolution)

<p>INTRODUCED BY Commissioner/Auditor: Commissioner Randy Leonard</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration – Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish <i>Randy Leonard / Stuart Oishi</i></p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL</p> <p>Prepared by: Stuart Oishi and Ben Walters Date Prepared: 12/12/12</p> <p>Financial Impact Statement & Public Involvement Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date Thursday, December 20, 2012</p> <p>City Attorney Approval <i>Benjamin Walters</i></p>	<p>CLERK USE: DATE FILED <u>DEC 14 2012</u></p> <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By:  Deputy</p> <p>ACTION TAKEN:</p>
--	--

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>2:00 PM</u></p> <p>Total amount of time needed: 2 hours (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz		<input checked="" type="checkbox"/>
2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	<input checked="" type="checkbox"/>	
4. Leonard	<input checked="" type="checkbox"/>	
Adams	<input checked="" type="checkbox"/>	

**Ballot Title for Prospective Initiative Petition ID PDX 2
(as prepared by the City Attorney)**

CAPTION:

Fluoridation of Portland drinking water supply (6)

QUESTION:

Shall Portland fluoridate its drinking water supply? (7)

SUMMARY:

Portland supplies drinking water to city residents and businesses and to several other municipalities and water districts outside Portland. Portland currently does not add fluoride to its drinking water supply.

This measure requires Portland to fluoridate Portland's drinking water supply. The measure requires fluoridation at levels intended to reduce tooth decay and promote oral health, as recommended by the Centers for Disease Control and Prevention or the Oregon Health Authority. The measure is a referral of an Ordinance adopted by the Council. Although the Ordinance requires fluoridation of Portland's drinking water supply by March 1, 2014, the actual date of implementation of fluoridation will depend on the effective date of this measure. The fluoride must meet standards of the American Water Works Association. The measure requires record-keeping related to quantities of water treated and the type and amounts of fluoride used. The measure also requires the City to conduct tests for fluoride in treated and untreated water in accordance with state and federal recommendations.

The measure funds fluoridation through water user fees. (173)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KIM KAMINSKI, an elector in the City of Portland; **FRANCES QUAEMPTS-MILLER**, an elector in the City of Portland; and **MALGOSIA CEGIELSKI**, an elector in the City of Portland,

Petitioners,

v.

JAMES H. VAN DYKE, City Attorney for the City of Portland, in his official capacity,

Respondent.

Case No. _____

121012349

PETITION TO REVIEW BALLOT TITLE (CITY OF PORTLAND REFERENDUM PETITION)

NOT SUBJECT TO MANDATORY ARBITRATION

Fee Authority: ORS 21.135(1), (2)(f)

Petitioners allege:

NATURE OF CLAIM

1.

Pursuant to ORS 250.296, petitioners hereby challenge the ballot title for "Prospective City Initiative¹ [sic] Petition ID PDX 2" ("Proposed Referendum") adopted by the City of Portland's City attorney, James H. Van Dyke ("City Attorney") in his official capacity, and forwarded to the City of Portland's Election Officer/City Recorder, Deborah Scroggin, on September 20, 2012.

2.

Petitioners Kim Kaminski ("Kaminski"), Frances Quaempts-Miller ("Quaempts-Miller"), and Malgosia Cegielski ("Cegielski") are the three chief petitioners that submitted the Proposed Referendum petition on September 12, 2012. The referendum petition seeks to put the Portland

¹ The Petition at issue is for a referendum and not an initiative. We assume this is an inadvertent typographical error, but this should be clarified by the City Attorney's office.

1 City Council's decision in Ordinance No. 185612 to add fluoridation chemicals to Portland's
2 drinking water before Portland voters who have specifically rejected water fluoridation in three
3 prior public votes.

4 3.

5 The ballot title adopted by the City Attorney is not "impartial" or "concise," but is
6 "unfair," "insufficient," and fails to comply with the requirements for city ballot titles under
7 ORS 250.035(1) and ORS 250.296 for the reasons set forth below.

8 **PARTIES**

9 4.

10 Petitioners are registered voters and residents of the City of Portland who are authorized
11 to bring the instant action under ORS 250.296 because they meet the statutory definition of an
12 "elector" pursuant to ORS 250.005(2).

13 5.

14 As chief petitioners and electors who are opposed to the ordinance that is the subject of
15 the proposed referendum, petitioners would be harmed by the unfair and politically slanted ballot
16 title because it fails to impartially describe the proposed measure and its primary effects.

17 6.

18 Respondent James H. Van Dyke is the City attorney for the City of Portland and has the
19 legal responsibility to prepare the ballot title for proposed referendums.

20 **FACTS**

21 7.

22 On September 12, 2012, the Portland City Council adopted Ordinance No. 185612 that
23 directs:

- 24 (1) The "Portland Water Bureau is authorized and directed to devise and implement a
25 program to fluoridate the City of Portland's public drinking water supply;"

26 //

- 1 (2) Establishes that “funds necessary for fluoridation shall be paid for through water
2 user fees;”
3 (3) Directs the Water Bureau to prepare “a preliminary estimate of the financial
4 resources required to implement such a program;”
5 (4) That the “Water Bureau shall design and implement a fluoridation program so that
6 the City’s water is effectively fluoridated no later than March 1, 2014;” and
7 (5) Requires that “[t]he Water Bureau shall keep an accurate record of the type and
8 amount of fluoride compound introduced and the quantities of water treated.”

9 8.

10 The City of Portland has estimated that added fluoridation chemicals to Portland’s
11 drinking water would cost water ratepayers \$5 million in initial infrastructure costs and \$500,000
12 in annual costs.

13 9.

14 On September 12, 2012, chief petitioners Kaminski, Quaempts-Miller, and Cegielski
15 submitted the proposed referendum petition to the City elections officer.

16 10.

17 On September 20, 2012, the City Attorney sent the ballot title at issue to the City
18 elections officer. *See* Exhibit “A” attached.

19 11.

20 Consistent with ORS 250.296(1), petitioners file this action within seven (7) business
21 days of the time the City Attorney filed the ballot title at issue with the City elections officer and
22 will give notice of this suit to the City elections officer by no later than the day after filing.

23 **TEXT OF THE PROPOSED MEASURE**

24 12.

25 The text of the Ordinance that petitioners seek to refer to the voters states:

26 //

- 1 a. The Portland Water Bureau is authorized and directed to devise and
 2 implement a program to fluoridate the City of Portland's public drinking
 3 water supply to the optimal levels beneficial to reduce tooth decay and
 4 promote good oral health as recommended by the Centers for Disease
 5 Control and Prevention or the Oregon Health Authority. Any fluoride
 6 compound used for this purpose shall meet the standards of the American
 7 Water Works Association.
- 8 b. Funds necessary for fluoridation shall be paid for through water user fees.
- 9 c. The Water Bureau shall make a preliminary report to the Council prior to
 10 the Council's final decisions on the Fall Budget Monitoring Process. The
 11 report shall include a general outline of a fluoridation program and a
 12 preliminary estimate of the financial resources required to implement such
 13 a program.
- 14 d. The Water Bureau shall design and implement a fluoridation program so
 15 that the City's water is effectively fluoridated no later than March 1, 2014.
- 16 e. The Water Bureau shall keep an accurate record of the type and amount of
 17 fluoride compound introduced and the quantities of water treated. The
 18 Water Bureau shall conduct and keep records of tests for fluoride
 19 compound in the treated and untreated waters in accordance with
 20 engineering and administrative recommendations for water fluoridation
 21 from the Centers of Disease Control or as otherwise required by the
 22 Oregon Health Authority.

23 **BALLOT TITLE**

24 13.

25 The ballot title adopted by the City Attorney states:

26 **CAPTION:** Fluoridation of Portland's drinking water supply

QUESTION: Shall Portland fluoridate its drinking water supply?

SUMMARY: Portland supplies drinking water to city residents and
 businesses and to several other municipalities and water
 districts outside Portland. Portland currently does not add
 fluoride to its drinking water supply.

This measure requires Portland to fluoridate Portland's
 drinking water supply. The measure requires fluoridation
 at levels intended to reduce tooth decay and promote oral
 health, as recommended by the Centers for Disease Control
 and Prevention or the Oregon Health Authority. The
 measure is a referral of an Ordinance adopted by the
 Council. Although the Ordinance requires fluoridation of
 Portland's drinking water supply by March 1, 2014, the

1 actual date of implementation of fluoridation will depend
2 on the effective date of the measure. The fluoride must
3 meet standards of the American Water Works Association.
4 The measure requires record-keeping related to the
5 quantities of water treated and the type and amounts of
6 fluoride used. The measure also requires the City to
7 conduct tests for fluoride in treated and untreated water in
8 accordance with state and federal recommendations.

9 The measure funds fluoridation through water user fees.

10 **APPLICABLE LAW**

11 14.

12 ORS 250.035 describes the requirements for city ballot titles stating:

- 13 (1) The ballot title of any measure, other than a state measure, to be initiated or
14 referred shall consist of:
- 15 (a) A caption of not more than 10 words **which reasonably identifies**
16 **the subject of the measure;**
 - 17 (b) A question of not more than 20 words which **plainly phrases the**
18 **chief purpose of the measure** so that an affirmative response to
19 the question corresponds to an affirmative vote on the measure;
20 and
 - 21 (c) A concise and impartial statement of not more than 175 words
22 **summarizing the measure and its major effect.**

23 Emphasis added.

24 15.

25 ORS 250.296 provides the statutory authority and criteria for any elector to challenge a
26 ballot title stating:

27 **Procedure for elector dissatisfied with ballot title of city measure.**

28 (1) Any elector dissatisfied with a ballot title filed with the city elections
29 officer by the city attorney or the city governing body, may petition the circuit
30 court of the judicial district in which the city is located seeking a different title
31 and stating the reasons the title filed with the court is insufficient, not concise or
32 unfair. The petition shall name as respondent the city attorney or city governing
33 body, depending on who prepared the ballot title, and must be filed not later than
34 the seventh business day after the title is filed with the city elections officer. The
35 court shall review the title and measure to be initiated or referred, hear arguments,
36

1 if any, and certify to the city elections officer a title for the measure which meets
2 the requirements of ORS 250.035.

3 **PROPOSED REPLACEMENT BALLOT TITLE**

4 16.

5 Petitioners believe the alternative ballot title language proposed below would accurately
6 and fairly reflect the text of the ballot measure that has been proposed and encourage the Court
7 to adopt such language in place of that submitted by the City Attorney:

8 **MEASURE NO. 2012-01**

9 **CAPTION:** Authorizes Portland Water Bureau to fluoridate Portland's
drinking water supply

10 **QUESTION:** Shall the Portland Water Bureau add fluoride compounds to
11 Portland's drinking water with funding from increased
water user fees?

12 **SUMMARY:** Portland currently does not add fluoride compounds to its
13 drinking water supply. This measure requires the Portland
14 Water Bureau to devise and implement a plan to
"fluoridate" Portland's drinking water supply by March 1,
15 2014. This plan would be paid for by an increase in water
user fees, but the amount of the fee has not yet been
16 determined. The measure directs the Water Bureau to
prepare a report on the fluoridation program and cost
estimates by Fall.

17 The measure is a referral of an Ordinance adopted by the
18 Portland City Council. The actual date of implementation
of fluoridation will depend on the effective date of the
19 measure. The fluoride compounds must meet standards of
the American Water Works Association. The measure
20 requires the Water Bureau to keep records related to the
quantities of water treated and the type and amounts of
21 fluoride compounds used. The measure also requires the
Water Bureau to conduct tests for fluoride compounds in
22 treated and untreated water in accordance with state and
federal recommendations.

23
24 /////
25 /////
26 /////
27

1 **FIRST CLAIM FOR RELIEF**

2 17.

3 Petitioners reallege and incorporate herein by reference the allegations contained in
4 ¶¶ 1-16 above.

5 18.

6 The ballot title at issue fails to comply with ORS 250.035(1) and ORS 250.296(1)
7 because:

- 8 (1) The ballot caption fails to “reasonably identify the subject of the measure;”
- 9 (2) The ballot question fails to “plainly phrase the chief purpose of the measure;”
- 10 (3) The summary fails to provide a “concise and impartial statement of not more than
11 175 words summarizing the measure and its major effect;” and
- 12 (4) The ballot title, as adopted, “is insufficient, not concise and unfair.”

13 19.

14 The ballot title fails to comply with ORS 250.035(1) and ORS 250.296(1) because:

- 15 (1) The title’s statement that water fluoridation is “recommended by the Centers for
16 Disease Control and Prevention or the Oregon Health Authority” is a clear
17 argument or endorsement in favor of the measure and is not therefore “impartial”
18 or fair;
- 19 (2) The title fails to clearly disclose that the capital construction and yearly
20 implementation costs of implementing the ordinance would result in increased
21 water user fees and that the actual cost of implementing the fluoridation measure
22 has yet to be determined;
- 23 (3) The title fails in any way to disclose that the ordinance at issue places
24 responsibility for all aspects of planning, implementing, budgeting and funding
25 water fluoridation with the Portland Water Bureau;

26 //

- 1 (4) The ballot title's statement that "the fluoride must meet standards of the American
2 Water Works Association" is inaccurate and biases the ballot title since the
3 ordinance itself is clear that "fluoride compounds" would be added to the drinking
4 water as opposed some pure form of the element "fluoride;"
- 5 (5) The ballot title fails to disclose that the ordinance was adopted by the "City
6 Council" and refers instead generally refers to approval by the "Council" whereas
7 the ballot title should be clear that fluoridation measure was approved by a
8 political body as opposed to a public health "council" or other "council" that
9 contains medical professionals.

10 20.

11 The ballot title is therefore not impartial, is biased, fails to adequately disclose the major
12 effects of the measure, and is otherwise flawed.

13 **WHEREFORE**, petitioners pray for relief as follows:

- 14 (1) A declaratory judgment finding that the ballot title at issue fails to comply with
15 the requirements of ORS 250.035 and ORS 250.296(1);
- 16 (2) An order adopting the alternative ballot title language provided above, or as
17 otherwise drafted by the Court, with the direction that the City elections officer
18 utilize such language as the formal ballot title for the proposed measure;
- 19 (3) Petitioners' reasonable attorney fees and costs;
- 20 (4) Such other and further relief as the Court deems just and equitable.

21 DATED this 1st day of October, 2012.

22 LANDYE BENNETT BLUMSTEIN LLP

23 By: 

24 Thane W. Tienson, OSB #773741
25 Of Attorneys for Petitioners
26

Office of
AUDITOR OF THE CITY OF PORTLAND

Portland, Oregon 97204

Room 140
City Hall

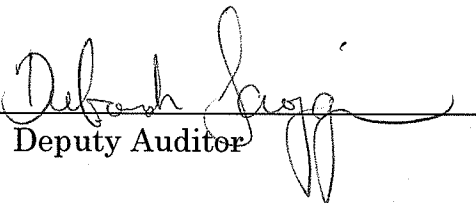
STATE OF OREGON }
County of Multnomah } SS
City of Portland }

I, Deborah S. Scroggin, do hereby certify that on November 7th, 2012, I received the results of the signature verification process completed by the Multnomah County Elections Office in conjunction with the Secretary of State's Elections Division for the referendum petition referring ordinance 185612: "Authorize and direct the Portland Water Bureau to fluoridate the City of Portland's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Oregon Health Authority," submitted by Chief Petitioners Kim Kaminski, Frances Quaempts-Miller, and Malgosia Cegielski. The petition contains the required 19,858 valid signatures of Portland City voters to qualify for the May 20, 2014 Primary Election and is hereby certified for Council action.

IN WITNESS THEREOF, I have hereunto set my hand and the seal of the City of Portland affixed this 8th day of November, 2012.

LaVonne Griffin-Valade
Auditor of the City of Portland

BY:


Deputy Auditor

ORDINANCE No. 185612

Authorize and direct the Portland Water Bureau to fluoridate the City of Portland's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Oregon Health Authority. (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Oral health is important to overall health, wellness, and quality of life;
2. Thirty five percent of Oregon's children have untreated tooth decay, ranking Oregon as fifth from last among all states according to the Center's for Disease Control and Prevention.
3. The benefits of fluoridation of the public drinking water system in the prevention of dental disease have been scientifically substantiated with over 65 years of experience;
4. Fluoride has been shown to reduce tooth decay in both children and adults by at least 25%;
5. Fluoridation benefits older adults by helping to prevent decay on the exposed root surfaces of teeth, which affects many seniors;
6. Fluoridation is the most cost-effective public health measure to prevent dental disease;
7. Fluoridation has been shown to save \$38 in dental costs for every \$1 invested in fluoridation in most public water supplies;
8. The most respected health and medical organizations in the United States, including the U.S. Centers for Disease Control & Prevention, the American Dental Association, the American Academy of Family Physicians, the Institute of Medicine, The American Public Health Association, and the American Academy of Pediatrics, endorse fluoridation of the public water system, and


NOW, THEREFORE, the Council directs:

- a. The Portland Water Bureau is authorized and directed to devise and implement a program to fluoridate the City of Portland's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Centers for Disease Control and Prevention or the Oregon Health Authority. Any fluoride compound used for this purpose shall meet the standards of the American Water Works Association.

- b. Funds necessary for fluoridation shall be paid for through water user fees.
- c. The Water Bureau shall make a preliminary report to the Council prior to the Council's final decisions on the Fall Budget Monitoring Process. The report shall include a general outline of a fluoridation program and a preliminary estimate of the financial resources required to implement such a program.
- d. The Water Bureau shall design and implement a fluoridation program so that the City's water is effectively fluoridated no later than March 1, 2014.
- e. The Water Bureau shall keep an accurate record of the type and amount of fluoride compound introduced and the quantities of water treated. The Water Bureau shall conduct and keep records of tests for fluoride compound in the treated and untreated waters in accordance with engineering and administrative recommendations for water fluoridation from the Centers of Disease Control or as otherwise required by the Oregon Health Authority.

Passed by the Council, **SEP 12 2012**
Commissioner Randy Leonard

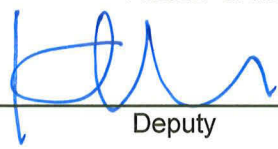
Prepared by: Stu Oishi
August 29, 2012

LaVonne Griffin-Valade
Auditor of the City of Portland
By 

Deputy

Agenda No.
ORDINANCE NO. 185612
 Title

Authorize and direct the Portland Water Bureau to fluoridate the City of Portland's public drinking water supply to the optimal levels beneficial to reduce tooth decay and promote good oral health as recommended by the Oregon Health Authority. (Ordinance)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Commissioner Leonard</p>	<p>CLERK USE: DATE FILED <u>AUG 30 2012</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By:  Deputy</p>
<p>Mayor—Finance and Administration - Adams</p>	
<p>Position 1/Utilities - Fritz</p>	
<p>Position 2/Works - Fish MF</p>	
<p>Position 3/Affairs - Saltzman</p>	
<p>Position 4/Safety - Leonard RL</p>	
<p style="text-align: center;">BUREAU APPROVAL</p>	
<p>Bureau: Water Bureau Head:</p>	<p>ACTION TAKEN:</p> <p style="text-align: center;">SEP 06 2012 PASSED TO SECOND READING SEP 12 2012 9:30 A.M.</p>
<p>Prepared by: Stu Oishi Date Prepared: August 29, 2012</p>	
<p>Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>Council Meeting Date Thursday, September 6, 2012</p>	
<p>City Attorney Approval JUD</p>	

AGENDA
<p>TIME CERTAIN X Start time: 2:00 PM</p> <p>Total amount of time needed: 4 hours (?) (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade



Elections Division
1221 SW 4th Avenue, Room 140
Portland, OR 97204
phone: (503) 823-3546
deborah.scroggin@portlandoregon.gov
web: www.portlandoregon.gov/auditor



DATE: November 8th, 2012

TO: Kimberly Kaminski
4732 NE Mason St.
Portland, OR 97218

VIA U.S. POST, E-MAIL

Frances Quaempts-Miller
5936 SW Karla Rd.
Portland OR 97239

VIA U.S. POST, E-MAIL

Dr. Malgosia Cegielski
8515 SW 61st Ave.
Portland, OR 97219

VIA U.S. POST, E-MAIL

From: Deborah Scroggin, City Elections Officer

Re: Signature Verification Process for Referendum Petition PDX 2 Referring Ordinance 185612.

On Thursday October 25th, 2012, the Auditor forwarded signature sheets for Referendum Petition PDX 2 to Multnomah County to arrange for verification as required by City Code Section 2.04.090. The Secretary of State's Elections Division worked with the County to complete the statistical sampling process. Per Portland City Code, the deadline for completion of signature verification is 30 days after the date the petition was filed, or on November 10th, 2012.

I received notification that the petition had completed the verification process from Tim Scott, Director of Elections for Multnomah County on November 7th, 2012. The sample indicates the petition contains approximately 33,015 valid signatures and therefore qualifies for the ballot for the intended election date of May 20, 2014.

Portland City Code section 2.04.100 requires that I file with City Council each referendum which qualifies for the ballot. Council may chose to repeal the Ordinance which would void the referendum petition. The deadline for such an action is December 8th, 2012.

If Council does not repeal the Ordinance, this office will certify the measure to the Multnomah County Elections Office to be placed on the ballot at the next regular City election on May 20th, 2014 pursuant to City Code 2.04.130 B.

Please let me know if you have any questions.

Deborah Scroggin
City Elections Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

KIM KAMINSKI, an elector in the City of
Portland; FRANCES QUAEMPTS-MILLER,
an elector in the City of Portland; and
MALGOSIA CEGIELSKI, an elector in the
City of Portland

Case No. 1210-12349

Petitioners,

GENERAL JUDGMENT

v.

JAMES H. VAN DYKE, City Attorney for the
City of Portland, in his official capacity,

Respondent.

and

MEL RADER, and UPSTREAM PUBLIC
HEALTH, a non-profit corporation,

Respondent-Intervenor.

This matter came before the Court on November 16, 2012, on a "Petition for Review
of Ballot Title (City of Portland Referendum Petition)" filed by petitioners Kimberly
Kaminski, Frances Quaempts-Miller, and Dr. Malgosia Cegielski pursuant to ORS 250.296.
Petitioners appeared through their attorneys Thane Tienson. Respondent James H. Van
Dyke, in his official capacity as City Attorney for the City of Portland, appeared through his
attorney Linly F. Rees, Sr. Deputy City Attorney. Respondent-Intervenor Mel Rader, and
Upstream Public Health, appeared through their attorneys Jeremy Sacks and Crystal Chase.
The Court reviewed the memoranda filed by the parties and heard statements of counsel.

Now, being fully advised,

////

1 IT IS HEREBY ADJUDGED that the following ballot title regarding Referendum
2 Petition ID PDX 2 is hereby certified to the elections officer for the City of Portland:

3 CAPTION: Fluoridation of Portland drinking water supply

4 QUESTION: Shall Portland fluoridate its drinking water supply?

5 SUMMARY: Portland supplies drinking water to city residents and
6 businesses and to several other municipalities and water
7 districts outside Portland. Portland currently does not add
8 fluoride to its drinking water supply.

9 This measure requires Portland to fluoridate Portland's
10 drinking water supply. The measure requires fluoridation at
11 the levels recommended by the Centers for Disease Control
12 and Prevention or the Oregon Health Authority intended to
13 reduce tooth decay and promote oral health. The measure is a
14 referral of an Ordinance adopted by the Council. Although the
15 Ordinance requires fluoridation of Portland's drinking water
16 supply by March 1, 2014, the actual date of implementation of
17 fluoridation will depend on the effective date of this measure.
18 The fluoride must meet standards of the American Water
19 Works Association. The measure requires record-keeping
20 related to quantities of water treated and the type and amounts
21 of fluoride used. The measure also requires the City to conduct
22 tests for fluoride in treated and untreated water in accordance
23 with state and federal recommendations.

24 The measure funds fluoridation through water user fees.

25 IT IS FURTHER ADJUDGED that no costs or disbursements or attorneys' fees will
26 be assessed against any party.

////

////

1 IT IS FURTHER ADJUDGED that this General Judgment fully and finally resolves
2 all requests for relief by Petitioners in this action.

3 DATED: December 14, 2012

4
5 KJ Karin J. Immergut
6 The Hon. Karin J. Immergut
Circuit Court Judge

7 Presented by:

8 Linly F. Rees

9 Linly F. Rees, OSB No. 945098
10 Sr. Deputy City Attorney
11 Email: linly.rees@portlandoregon.gov
Of Attorneys for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF COMPLIANCE WITH UTCR 5.100

I hereby certify that in accordance with UTCR 5.100(c), a copy of the foregoing GENERAL JUDGMENT was sent to attorneys for Petitioners and Respondent-Intervenors, as outlined below, on November 19, 2012, a date which is not less than three days prior to submission of the GENERAL JUDGMENT to the Court.

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing GENERAL JUDGMENT on:

Thane W. Tienson
Landye Bennett Blumstein LLP
1300 SW 5th Ave, Ste 3500
Suite 2600
Portland, OR 97201
Of Attorneys for Petitioners Kaminski

Jeremy Sacks
Crystal Chase
Stoel Rives LLP
900 SW 5th Avenue Ste 2600
Portland OR 97204
Of Attorneys for Respondent-Intervenor Rader

on November 19, 2012, by causing a full, true and correct copy thereof, addressed to the last-known address (or fax number) of said attorney, to be sent by the following method(s):

- X by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- by **hand delivery**.
- by **facsimile transmission**.
- X by **email**.



LINLY F. REES, OSB #945098
Sr. Deputy City Attorney
Email: linly.rees@portlandoregon.gov
Of Attorneys for Respondent

Calculations following the first and second samples for a Oregon local petition

Comment/description Multnomah County

Date of data entry (mm/dd/yy) ? 11/07/12

Petition ID ? PDX02-Ref
 Required number R=? 19,858

DATA & CALCULATIONS

Quantity	Notation / formula	Number	Percent of petition
Petition size:	$N = ?$	42,736	100.00%
First sample			
Data entry			
Sample size	$n1 =$	4,274	10.00%
Number valid	$y1 =$	3,442	
Number valid pairs in combined sample	$e2 =$	8	
Number valid triples in combined sample	$e3 = ?$		
Calculations			
Proportion valid	$y1p = y1/n1$	0.805335	
Estimate for number valid	$Yest = (N/n1)*y1$	34,416.78	80.53%
Estimate for # duplicates	$Dest = (N/n1)*(N/n1)*(e12+e13)+(N/n1)*(e13)$	799.85	1.87%
Estimate for number unique valid	$Mest = Yest - Dest$	33,616.9	78.66%
MOE for Mest	$MOE=1.645*\sqrt{[(N(N-n1)/n1)*[yp1*(1-yp1)+Dest(1/n1+(-3+4*y1p)/N)]}$	601.8	1.41%
Lower conf. Limit for M	$ML = Mest - MOE$	33,015.1	77.25%
Conclusion			
Qualify petition: Yes or No ?	$ML \geq R$ or $ML < R$		Yes

Combined first and second sample sizes

Data entry			
Size of first sample	$n1$	4,274	10.00%
Size of second sample	$n2 = ?$		0.00%
Size of combined first & second samples	$n = n1 + n2$	4,274	10.00%
Number valid in first sample	$y1$	3442	
Number valid in second sample	$y2 = ?$		
Number valid in combined sample	$y = y1 + y2$	3,442	
Number valid pairs in combined sample	$e2 = ?$		
Number valid triples in combined sample	$e3 = ?$		
Calculations for combined sample			
Estimate for # valid:	$Yest = (N/n)*y$	34,416.78	80.53%
Estimate for number of dups	$Dest = (N/n)*(N/n)*(e2+e3)+(N/n)*e3$	0.00	0.00%
Estimate for number distinct valid	$Mest = Yest - Dest$	34,416.8	80.53%
Conclusion for combined sample			
Qualify petition: Yes or No ?	$(ML \geq R$ or $ML < R)$		Yes

County: MULTNOMAH
User Name : Davis, Summer

All County Sampling Results

Date : 11/7/2012 2:11:24 PM
Report No. : PM-009

Number :PDX02-Ref Title :Referendum Petition PDX 02 Type : Referendum-County

	County	Sigs_Sent	NR	MN	TL	IS	NM	OC	INM	INNV	Other	Valid
Submittal 1												
Sample 1	26 MULTNOMAH	4274	220	0	70	10	162	0	147	10	213	3442
Totals		4274	220	0	70	10	162	0	147	10	213	3442

May 2013 Special Election Official Results

CITY MEASURES					
<u>Measure 26-150</u>	Multnomah	Clackamas	Washington	Total	%
Yes	118,658	134	234	119,026	74.79%
No	39,914	109	92	40,115	25.21%
TOTAL	158,572	243	326	159,141	100.00%
<u>Measure 26-151</u>	Multnomah	Clackamas	Washington	Total	%
Yes	64,728	114	162	65,004	39.42%
No	99,573	134	173	99,880	60.58%
TOTAL	164,301	248	335	164,884	100.00%